

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

In re	)	
	)	
TANANA VALLEY TELEVISION	)	
COMPANY	)	
KFXF(DT), Fairbanks, Alaska	)	MB Docket No. ____
FCC Facility ID No. 64597	)	
	)	
GRAY TELEVISION LICENSEE, LLC	)	
KFXF-LD, Fairbanks, Alaska	)	
FCC Facility ID No. 72584	)	
	)	
Petition for Waiver of Commission Program	)	
and System Information Protocol (PSIP)	)	
Rules to Provide an Alternative PSIP Virtual	)	
Channel to KFXF(DT) and to KFXF-LD	)	
 To: Marlene Dortch, Secretary		
Attention: Chief, Media Bureau		

**JOINT PETITION FOR WAIVER AND REQUEST FOR  
REASSIGNMENT OF PSIP CHANNELS**

Tanana Valley Television Company (“TVTV”) and Gray Television Licensee, LLC (“Gray”) (collectively, the “Joint Petitioners”) hereby jointly request waiver of the FCC’s Program and System Information Protocol (“PSIP”) Rules for KFXF(DT), Fairbanks, Alaska (FCC Facility ID No. 64597)<sup>1</sup> and KFXF-LD, Fairbanks, Alaska (FCC Facility ID No. 72584) (collectively, the “Stations”) for changes in virtual major channel numbers concurrent with a change in ownership and programming. Grant of the requested waiver is appropriate because making the PSIP reassignments proposed herein will prevent viewer confusion in Fairbanks and better effectuate the FCC’s virtual channel policies than retention of the current PSIP

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<sup>1</sup> Effective February 9, 2017, the call sign for KFXF(DT) is changing to KFYF(DT).

assignments for the Stations. Moreover, the proposed changes in virtual channels will not have any impact on any other television stations.

## **BACKGROUND**

For decades, television viewers in the Fairbanks, Alaska Designated Market Area (“DMA”) have received Fox programming on virtual channel 7.1 from TVTV’s KFXF(DT), the local Fox affiliate. Thus, viewers have come to expect to receive their local Fox affiliate’s programming on virtual channel 7.1, and TVTV invested significant resources in associating its local and network-affiliated programming with that channel assignment.

Gray has since acquired from TVTV the Fox affiliation and local programming assets for KFXF(DT) and now broadcast that programming on Gray’s KFXF-LD. To ensure that viewers receive the local Fox affiliate on its historic channel, the Joint Petitioners seek waiver of the FCC’s PSIP Standard<sup>2</sup> and request assignment of alternative PSIP virtual channels to KFXF(DT) and KFXF-LD—specifically, a switch of virtual major channel numbers such that (1) TVTV’s KFXF(DT) would be assigned virtual major channel 22, which is currently held by Gray’s KFXF-LD, and (2) Gray’s KFXF-LD would be assigned virtual channel 7, which is currently held by TVTV’s KFXF(DT). Granting this request would be consistent with the established viewing patterns of Fairbanks viewers, who are accustomed to finding Fox programming on virtual channel 7.1, and it would preserve the investment that TVTV and Gray have made in ensuring consistent availability of a high-quality Fox programming service on Channel 7.<sup>3</sup>

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<sup>2</sup> ATSC A/65C (“ATSC Program and System Information Protocol for Terrestrial Broadcast and Cable, Revision C with Amendment No. 1, dated May 9, 2006”) (the “*PSIP Standard*”), incorporated in the FCC’s rules by 47 C.F.R. § 73.682(d).

<sup>3</sup> Gray acquired KFXF-LD from TVTV on January 13, 2017. Prior to the acquisition, when both KFXF(DT) and KFXF-LD were under TVTV’s common ownership, TVTV operated both KFXF(DT) and KFXF-LD on virtual channel 7.1 pursuant to an exception in the PSIP Standard.

The Joint Petitioners requests are technically feasible because no station with service contours overlapping those of any of the stations uses the virtual channels associated with the over-the-air RF channel of KFXF(DT) or KFXF-LD.<sup>4</sup> The change will affect only KFXF(DT) and KFXF-LD, which are licensed to the Joint Petitioners, each of which fully supports the proposed change. Under these circumstances, the Joint Petitioners' requested virtual channel reassignments would unquestionably serve the public interest and the FCC's policies far better than continuation of the current virtual assignments after the local Fox affiliation moves to Gray.

### ARGUMENT

Pursuant to Section 1.3 of the FCC's rules, waivers are justified when particular facts make insisting on strict compliance with the rules inconsistent with the public interest.<sup>5</sup> Specific considerations that can justify waivers include hardship, equity or more effective implementation of overall policy on an individual basis.<sup>6</sup> Waivers are appropriate if (i) a party demonstrates special circumstances and (ii) deviation from the general rule would benefit the public interest.<sup>7</sup>

The FCC historically has viewed petitions for waiver of the *PSIP Standard* more favorably than those seeking waiver of most other rules, because the FCC foresaw when it adopted the *PSIP Standard* that there would be instances when the literal application of the standard would not advance the FCC's objectives or the public interest. In its *Second Periodic Review*, the FCC expressly recognized that waivers would be an important part of virtual channel regulation: "[t]o the extent broadcasters have a unique situation that is not provided for in PSIP,

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<sup>4</sup> See *infra* note 13.

<sup>5</sup> 47 C.F.R. §1.3; *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

<sup>6</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

<sup>7</sup> *Network IP, LLC v. FCC*, 548 F.3d 116, 125-28 (D.C. Cir. 2008); *Northeast Cellular*, 897 F.2d at 1166.

the FCC may grant exceptions on a case-by-case basis.”<sup>8</sup> The Media Bureau (the “Bureau”) has held that a waiver of the *PSIP Standard* is warranted if (i) the circumstances present a “unique situation” not accounted for by the standard and (ii) the requested waiver is technically feasible.<sup>9</sup>

Under this standard, the Bureau has readily granted technically feasible waivers of the *PSIP Standard* in a wide variety of circumstances.<sup>10</sup> For example, in *Weigel Broadcasting Company*, the Bureau granted a waiver of the *PSIP Standard* for the use of alternative virtual channels solely to avoid viewer confusion when two stations voluntarily swapped network programming.<sup>11</sup> The Bureau quoted approvingly the petitioner’s statement that “[g]rant of the instant waiver request would allow the proposed programming swap to be completely transparent to viewers on both stations, because they will be able to continue to tune to the virtual channel number already associated with the underlying content” — meaning, in that instance, the network programming source.<sup>12</sup> The Bureau also found that the proposed waiver was “technically feasible,” because the stations’ protected service contours would not overlap with the protected service contours of other stations using the same major channel numbers.<sup>13</sup>

Joint Petitioners’ present request satisfies both the FCC’s general waiver standards and

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<sup>8</sup> *Second Periodic Review*, *supra*, 19 FCC Rcd at 18346.

<sup>9</sup> *Weigel Broadcasting Company*, Letter of Hossein Hashemzadeh, Deputy Chief, Video Division, Media Bureau, dated August 16, 2012.

<sup>10</sup> See, e.g., *Weigel*, *supra*; see also *Entravision Holdings, LLC* (KETF-CD, Laredo, Texas) (Feb. 17, 2012), [http://licensing.fcc.gov/cgi-bin/prod/cdb/forms/prod/getimportletter\\_exh.cgi?import\\_letter\\_id=31837](http://licensing.fcc.gov/cgi-bin/prod/cdb/forms/prod/getimportletter_exh.cgi?import_letter_id=31837) February 17, 2012 (waiver granted to avoid confusion resulting from foreign station’s use of the virtual channel that the *PSIP Standard* assigned to licensee seeking waiver); *Francois Leconte* (WDFL-LD, Miami, Florida) (November 27, 2013) (waiver granted for use of alternative virtual channel to avoid confusion from transmitter site relocation that resulted in service contour overlap of two stations with the same virtual channel).

<sup>11</sup> See *Weigel*, *supra*.

<sup>12</sup> *Id.* at 2.

<sup>13</sup> *Id.*



the specific standards the Bureau has developed for PSIP waivers. Joint Petitioners' requested PSIP assignments would better serve the public interest in this case than literal application of the *PSIP Standard*. The *PSIP Standard* was adopted to limit consumer confusion and preserve broadcasters' established goodwill in their traditional channel positions.<sup>14</sup> Both of these policies favor assigning the requested PSIP Channels to KFXF(DT) and KFXF-LD. Viewers are accustomed to finding FOX-affiliated programming and other syndicated programming now airing on KFXF-LD on Channel 7.1. Absent the requested waivers, viewers would be forced to learn a new channel position for their Fox affiliate, causing significant inconvenience. At the same time, enforcing the *PSIP Standard* would not offer viewers any benefit at all. Waivers were designed for cases like this where the request offers significant net benefit versus virtually no cost, and this one should be granted.

The requested waiver also satisfies the more specific PSIP waiver standards established by the Bureau. First, the instant request presents a "unique situation" not provided for in the *PSIP Standard*. The *PSIP Standard* lacks any mechanism for adjusting PSIP assignments where, as here, the standard assignment rules would lead to unnecessary viewer confusion. The logic of the policies underlying the PSIP Standard – protection of consumers and preservation of historical broadcaster investments – requires that the programming and service offered on a particular virtual channel number remain relatively stable. In cases where dramatic programming shifts take place, application of the PSIP channel assignment rules leads to consumer confusion and the loss of the value of prior investments to associate particular programming with particular channel numbers. Assigning KFXF(DT) to PSIP channel 22 and KFXF-LD to PSIP channel 7 will ensure that Fairbanks viewers are not confused or

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<sup>14</sup> *Second Periodic Review, supra*, 19 FCC Rcd at 18346.

inconvenienced.<sup>15</sup> It will likewise protect the value and customer goodwill built up by the Joint Petitioners' reliable delivery of high-quality local service to the Fairbanks Community. These results are consistent with the Commission's stated goals in establishing the *PSIP Standard*. The requested waiver therefore satisfies the first prong of the Bureau's PSIP waiver test.

Second, the proposed waiver is technically feasible. The operation of KFXF(DT) and KFXF-LD on the requested PSIP channels creates no technical challenges. The instant request does not require any of the stations' protected service contours to overlap the protected service contours of other stations using corresponding virtual or RF channel numbers.<sup>16</sup> The two stations whose licensees are jointly requesting the waiver for the exchange of PSIP channels are the only stations affected. Thus, the Bureau's technical feasibility standard also is met here.

In sum, a grant of Joint Petitioners' requested waiver would serve rather than infringe the principal policy goals underlying the FCC's adoption of the *PSIP Standard*.

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<sup>15</sup> KFXF(DT) is presently silent. If or when it is returned to air, it will have different programming, and to viewers it will appear as if it is a new station. Therefore, viewers will not be confused if KFXF(DT) is assigned a new major channel number.

<sup>16</sup> See Exhibit A. Exhibit A demonstrates that no contour overlap will occur if KFXF(DT) and KFXF-LD are assigned the proposed RF or virtual channels. Indeed, there is no station within hundreds of miles that operates on virtual channel 22.

Conclusion

Joint Petitioners respectfully request that the Commission grant the requested waivers.

Respectfully submitted,

GRAY TELEVISION LICENSEE, LLC

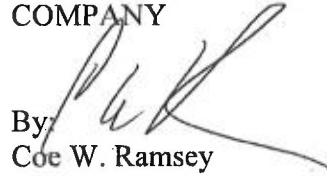


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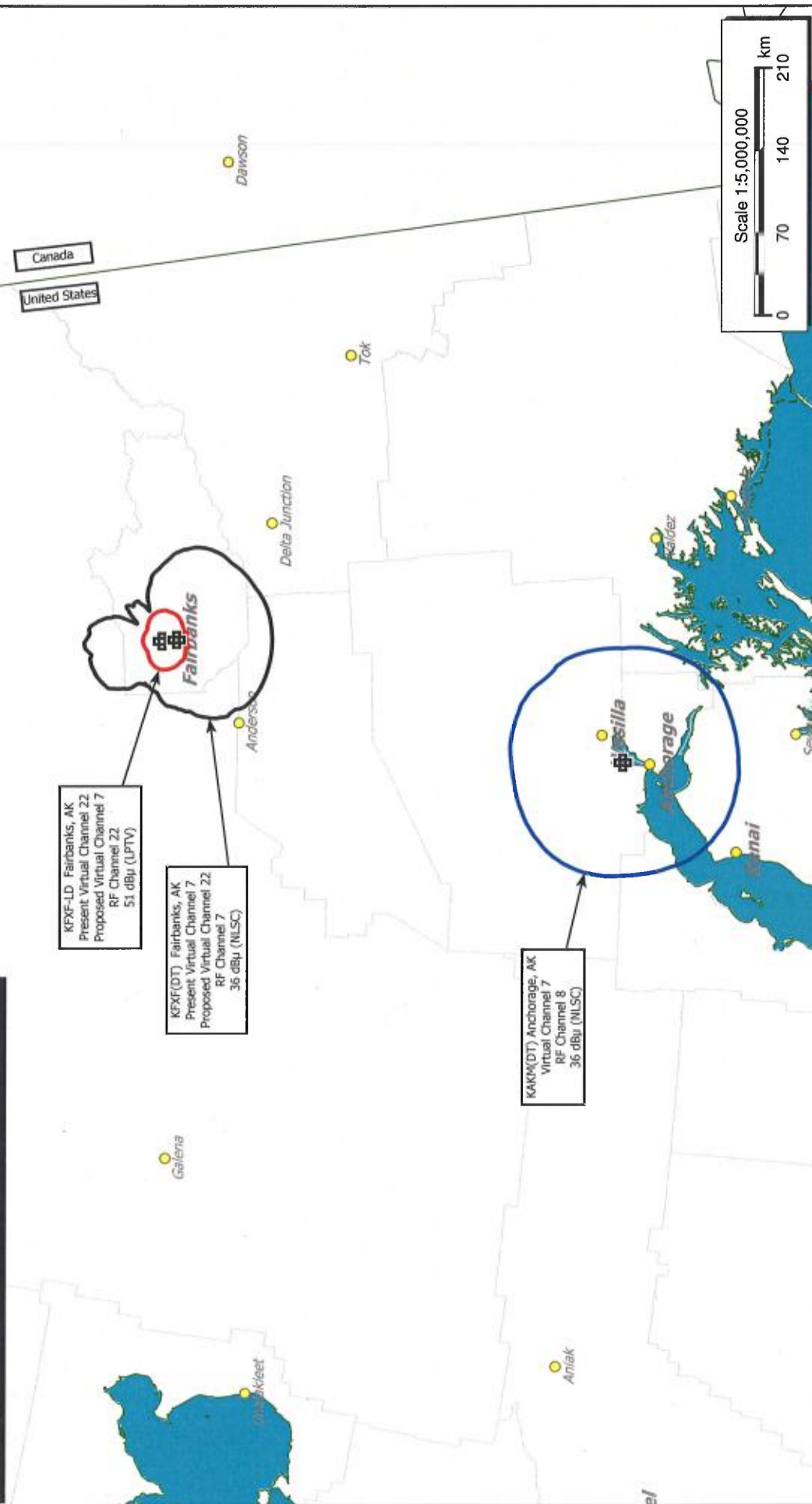
February 7, 2017

## Exhibit A



**Chesapeake RF Consultants, LLC**  
Radiofrequency Consulting Engineers  
Digital Television and Radio

**Radiofrequency Consulting Engineers**  
**Digital Television and Radio**



**CERTIFICATE OF SERVICE**

I, Verdette Dickerson, of Cooley LLP do hereby certify that a true and correct copy of the foregoing "Joint Petition for Waiver" was served by first-class U.S. mail, postage-prepaid, unless otherwise indicated, on February 7, 2017 on the following:

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